

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)	Chapter 11
SEARS HOLDINGS CORPORATION, <i>et al.</i> ,)	Case No. 18-23538 (RDD)
)	(Jointly Administered)
Debtors. ¹)	

**STIPULATION AND ORDER CONCERNING
THE RESOLUTION OF CERTAIN SECTION 507(b) CLAIMS**

This Stipulation and Order Concerning the Resolution of Certain Section 507(b) Claims (the “**Stipulation**”), by and among Sears Holdings Corporation and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”) and Wilmington Trust, National Association, as Prepetition Second Lien 2018 Indenture Trustee² and as Prepetition Second Lien Collateral Agent (“**Wilmington Trust**”), Cyrus Capital Partners, L.P. (“**Cyrus**”) and ESL Investments, Inc. and certain of its affiliated entities (including JPP, LLC and JPP II, LLC) (collectively, “**ESL**”; together with Cyrus and Wilmington Trust, “**Second Lien Parties**”; together with the Debtors, the “**Parties**”) dated as of this 2nd day of June 2019.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the *Final Order (I) Authorizing the Debtors to (A) Obtain Post-Petition Financing, (B) Grant Senior Secured Priming Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Prepetition Secured Parties; (III) Modifying the Automatic Stay; and (IV) Granting Related Relief* (the “**Final DIP Order**”) [Dkt. No. 955].

RECITALS

WHEREAS on November 30, 2018, the Final DIP Order was entered;

WHEREAS, pursuant to Section 507(b) of the Bankruptcy Code, the Final DIP Order grants, as adequate protection of the interests of the Second Lien Parties, the Prepetition Second Lien Adequate Protection Liens and Prepetition Second Lien Facilities Adequate Protection Claims (collectively, the “**Section 507(b) Claims**”);

WHEREAS on May 26, 2019, the Debtors filed the *Motion to Estimate Certain 507(b) Claims for Reserve Purposes* [Dkt. No. 4034];

WHEREAS on May 28, 2019, the Second Lien Parties submitted a letter to the United States Bankruptcy Court for the Southern District of New York (the “**Court**”) proposing that their Section 507(b) Claims be resolved by a motion under Bankruptcy Rule 3012 rather than by an estimation proceeding;

WHEREAS a scheduling conference regarding the motion and the Second Lien Parties’ requested relief was held before the Court on May 29, 2019; and

WHEREAS the Parties have determined to resolve the 507(b) Claims on the terms and conditions set forth herein;

NOW THEREFORE, based upon the foregoing recitals, which are incorporated as though fully set forth herein, it is hereby Stipulated and Agreed, and upon Court approval it shall be ordered, as follows:

1. The Debtors’ request with respect to its request for estimation is hereby withdrawn and the Debtors’ motion is deemed to be a motion pursuant to Bankruptcy Rule 3012 to determine the amount, if any, of the Second Lien Parties’ Section 507(b) Claims and, pursuant to Section 506(c) of the Bankruptcy Code, for a surcharge upon the collateral securing the Second Lien Parties’ claims (the “**Rule 3012 Motion**”).

2. All Parties shall respond to any reasonable request for information for purposes of preparing the expert reports referred to in paragraphs 3 and 4 below within three (3) business days of any such request.

3. The Second Lien Parties shall file their superpriority administrative expense claims pursuant to Section 507(b) of the Bankruptcy Code and requests for determination of the amount of their secured claims, supporting expert reports and a memorandum of law in support of such claims, including their response to the Debtors' request for a 506(c) surcharge, by no later than Tuesday, June 18, 2019.

4. Any responses in opposition and opposing expert reports (collectively, the "Responses") shall be filed by no later than Thursday, June 27, 2019.

5. The Second Lien Parties shall file their replies to the Responses by no later than Wednesday, July 3, 2019.

6. Depositions of the Second Lien Parties' experts shall take place between Thursday, June 27, 2019 and Wednesday, July 3, 2019.

7. Depositions of any experts of the opponents to the relief requested shall take place on Wednesday, July 10, 2019 and Thursday, July 11, 2019.

8. Simultaneous exchange and submission of direct testimony from all Parties and final supplemental briefing addressing expert discovery shall take place at Noon Eastern time on Monday, July 15, 2019.

9. A hearing on the Rule 3012 Motion shall commence at 10:00 a.m. ET on Thursday, July 18, 2019, or such other time as shall be set by the Bankruptcy Court.

10. The above schedule may be modified only pursuant to an agreement of the Parties (which may be confirmed by email) or by the Bankruptcy Court for good cause shown.

11. This Stipulation may be executed in one or more counterparts, including facsimile or electronic counterparts, all of which together shall constitute one and the same instrument.

12. The Bankruptcy Court shall retain jurisdiction to resolve any disputes or controversies arising from this Stipulation.

IN WITNESS WHEREOF, this Stipulation has been executed and delivered as of the date first above written.

Dated: New York, New York
June 2, 2019

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Dated: June 21, 2019

White Plains, New York

SO ORDERED:

/s/ Robert D. Drain
Hon. Robert D. Drain
United States Bankruptcy Judge